In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-203

MORRIS ROSENBLATT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNIED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner brought this action in the Court of Claims to recover salary lost when he resigned his position as Management Analyst with the Bureau of the Budget. Petitioner contended that his resignation, which occurred the day following a September 16, 1969 meeting with his supervisor and a personnel officer, was involuntary and that he was therefore entitled to various procedural safeguards which were not provided him. The Board of Appeals and Review of the United States Civil Service Commission, affirming the decision of the Appeals Examining Officer, held that the petitioner's resignation was voluntary.

In an extensive and carefully considered opinion, the trial judge in the Court of Claims found that petitioner's resignation was not obtained "by duress, time pressure, intimidation, deception, or by any other misconduct on the

part of any representative of the Bureau, but was voluntarily executed and submitted by him, and duly accepted by the Bureau 5 months before plaintiff first requested its withdrawal" (Pet. App. B, p. 45).

Specifically, the trial judge found that prior to and at the time of the September 16, 1969 meeting petitioner seriously contemplated leaving his employment in the Property and Supply Management Branch of the Bureau of the Budget; that due to his temperamental conduct, petitioner was completely alienated from most of the Branch staff by September 1969; and that neither the personnel officer nor petitioner's supervisor planned to ask for petitioner's resignation at the September 16, 1969 meeting (Pet. App. B, p. 43). The trial judge further found that after the personnel officer asked petitioner for suggestions as to how to handle the serious problem, petitioner eschewed a conciliatory approach but instead inquired whether his resignation was desired. At that point, the trial judge found, it was reasonable for the personnel officer to say that this would be a good solution and that in the absence of petitioner's resignation, some form of adverse action would have to be taken (Pet. App. B, pp. 43-44). Finally, the trial judge found that neither the personnel officer nor petitioner's supervisor exerted time pressure on petitioner concerning the submission of his resignation (Pet. App. B, p. 44).

The Court of Claims adopted and affirmed the decision of the trial judge (Pet. App. A).

The sole question presented by the petition for a writ of certiorari is whether the Civil Service Commission and the Court of Claims erred in finding that petitioner's resignation was voluntary. Both the Civil Service Commis-

sion and the Court of Claims considered and rejected petitioner's contentions. Their findings, upon which we rely, are correct and further review by this Court is not warranted.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1974.